

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Inquiry Concerning High-Speed Access to the)	GN Docket No. 00-185
Internet Over Cable and Other Facilities)	
)	
Internet Over Cable Declaratory Ruling)	
)	
Appropriate Regulatory Treatment for)	CS Docket No. 0252
Broadband Access to the Internet Over Cable)	
Facilities)	

**COMMENTS OF
TELECOMMUNICATIONS FOR THE DEAF, INC.**

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SUMMARY

TDI, a national advocacy organization actively engaged in representing the interests of the twenty-eight million Americans who are deaf, hard of hearing, late-deafened, and deaf-blind, urges the Commission to ensure that the statutory and regulatory protections currently afforded persons with disabilities are not removed or rendered unenforceable by the Commission's determination that cable modem services are information services. TDI is concerned that, in light of the Commission's conclusion in its Declaratory Ruling, cable modem providers will be free to deny persons with disabilities access to the cable modem services necessary to access important broadband services.

As the Commission is aware, access to the Internet is critically important for individuals with speech or hearing disabilities. The availability of new products and services, including IP Relay, video-relay, real-time video streaming, and data immediately convertible to alternative protocols enable persons with speech or hearing disabilities to communicate more freely with their friends and relatives, take advantage of greater employment and other opportunities, and improve their daily lives. Nonetheless, the Commission has recognized that there are numerous impediments to the ability of persons with disabilities to access these valuable services at moderate cost. Accordingly, it is essential that the Commission take the important step in this proceeding of establishing appropriate rules to ensure that persons with disabilities have the ability to obtain access to and use advanced services. Cable modem service is the most readily available broadband access service for most consumers.

At a minimum, if the Commission upholds its determination that cable modem access service is an information service, the Commission must adopt, under its Title I ancillary jurisdiction, appropriate regulatory safeguards that mirror the safeguards set forth in Section 255

of the Telecommunications Act of 1996. In absence of the statutory protections provided by Section 255, there are not adequate market or other incentives for cable modem providers to protect the interests of persons with disabilities. The Commission has exercised its Title I ancillary jurisdiction on previous occasions to protect the ability of persons with disabilities to access information services and the Commission should do so in this proceeding as well.

In particular, the Commission must ensure that cable modem subscribers can obtain access to multiple Internet Service Providers (“ISP”) or other third-party providers. A provider’s policy that restricts cable modem subscribers only to their cable modem provider’s ISP or services would severely limit the choices and services available to consumers. If a third-party provider offers services, features or capabilities of special use to individuals with speech or hearing disabilities, it is critical that such persons have immediate access to the services at moderate cost without having to pay duplicative costs.

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**COMMENTS OF
TELECOMMUNICATIONS FOR THE DEAF, INC.**

Telecommunications for the Deaf, Inc. (“TDI”), through undersigned counsel, hereby submits its Comments in response to the Federal Communications Commission’s (“Commission”) notice of proposed rulemaking (“NPRM”) in the above-referenced proceeding.¹

I. INTRODUCTION: TELECOMMUNICATIONS FOR THE DEAF, INC.

TDI is a national advocacy organization actively engaged in representing the interests of the twenty-eight million Americans who are deaf, hard of hearing, late-deafened, and deaf-blind. TDI’s mission is to promote equal access to broadband facilities, media, and telecommunications for the aforementioned constituency groups through consumer education and involvement, technical assistance and consulting, application of existing and emerging technologies, networking and collaboration, uniformity of standards, and national policy development and advocacy. Only through equal access to broadband Internet access services, including cable modem service, will these twenty-eight million Americans be able to enjoy the opportunities and

¹ *Declaratory Ruling and Notice of Proposed Rulemaking*, FCC 02-77 (rel. March 15, 2002) (“NPRM”).

benefits of the telecommunications revolution to which they are entitled. Furthermore, only by ensuring equal access for all Americans will society fully benefit from the myriad skills and talents of persons with disabilities.

II. DISCUSSION

A. Overview

In considering the particular regulatory regime to apply to cable modem service, the FCC must remain mindful of the unique needs and concerns of persons with speech and hearing disabilities. TDI finds it particularly troubling that, while the FCC specifically requested comment on the possible application of Section 255 of the Communications Act of 1934² under its proposed regulatory regime for wireline broadband services,³ in this proceeding the FCC does not even mention the needs of people with disabilities. TDI is concerned that, in light of the Commission's conclusion in its Declaratory Ruling that cable modem service is an information service rather than a telecommunications service, cable companies will be free to deny persons with disabilities the cable modem services they require to access important broadband service at moderate cost.

Therefore, if the Commission retains the information service classification for cable modem service, TDI urges the Commission concurrently to exercise its ancillary jurisdiction under Title I of the Communications Act to ensure that all consumers have the same level of

² 47 U.S.C. § 255. Section 255 requires that a "provider of telecommunications services shall ensure that the service is accessible and usable by individuals with disabilities, if readily achievable."

³ *In the Matter of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities; Universal Service Obligations of Broadband Providers Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements*, Notice of Proposed Rulemaking, CC Docket Nos. 02-33, 95-20, 98-10, FCC 02-42 (rel. Feb. 15, 2002) ("Broadband NPRM"), at ¶ 59.

access to cable modem services as they would have to wireline broadband services. At a minimum, such services should include the ability to utilize cable modem service for access to the Internet and other broadband services, such as IP or video relay, or text-based messaging services.

B. Internet Access Is Critically Important To Those With Speech Or Hearing Disabilities.

Individuals with speech or hearing disabilities particularly benefit from access to the Internet. The Commission is well aware of the value of access to the Internet to persons with disabilities. New services and equipment available to people with speech and hearing disabilities, as well as new developments in broadband Internet technology, such as video-relay and Internet protocol or IP relay,⁴ may enable people with hearing and speech disabilities to communicate freely with friends and relatives, to take advantage of greater employment opportunities, and to improve their daily lives.

While new services, such as IP Relay, have the potential to offer significant benefits to persons with speech or hearing disabilities, broadband Internet access provides far greater benefits. For example, broadband Internet access provides two distinct features that dial-up access cannot viably provide: real-time video streaming,⁵ and data signals immediately

⁴ IP Relay allows any person with access to the Internet through a computer, a web-enabled wireless phone, a personal digital assistant, or any other IP-capable device to access WorldCom's telecommunications relay center to communicate with individuals with speech or hearing disabilities. *Provision of Improved Telecommunications Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Declaratory Ruling and Second Further Notice of Proposed Rulemaking, CC Docket No. 98-67, FCC 02-121 (rel. April 22, 2002) ("*WorldCom IP Relay Order*"), at ¶ 4.

⁵ Real-time video streaming will permit a person with hearing disabilities to access remote interpreting and peer-to-peer signing in breathtaking ways. For example, interpreters could provide real-time interpretation of live events over the Internet; students with speech or hearing disabilities could utilize Internet-accessed interpreters to request research assistance from school and university libraries; and police could interview witnesses with speech or hearing disabilities immediately over the Internet. In addition, the ability of a person with a speech or hearing disability to see the person with whom he is communicating via real-time video streaming will vastly improve that person's ability to communicate compared with his ability using currently available traditional relay services.

convertible to alternative protocols.⁶ In addition, such services as Instant Messaging, e-mail, or other text-based messaging services are valuable alternatives to traditional voice telephones for individuals with speech or hearing disabilities utilize as equivalents to voice telephony. Indeed, the Commission recently found that Internet access through advanced services has the potential to provide significant opportunities for persons with disabilities.⁷

C. There Exist Numerous Impediments To Access To Advanced Services By Persons With Disabilities.

The Commission has also recognized that persons with disabilities face significant impediments to their ability to access advanced services. Individuals with disabilities are often in the lower-income brackets and are less likely than the general population to have access to computers and the Internet.⁸ In addition, more than 75% of persons with disabilities are unemployed, and thus often lack financial resources to obtain advanced services.⁹ As a result, these individuals are often unable to take advantage of new services and technologies that can improve their ability to use advanced services and thus their ability to participate fully in the digital environment. In developing rules governing the provision of broadband access, and in particular cable modem services, the Commission must ensure that its new rules do not impair

⁶ See Frank G. Bowe, *Broadband and Americans with Disabilities* (May 2002), available at <http://www.newmillenniumresearch.org/broadband.html>. For example, speech recognition software could be used to convert real-time audio to text over the Internet or to include captioning with audio or video materials on the Internet.

⁷ *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable And Timely Fashion, and Possible Steps To Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, CC Docket 98-146, Third Report (rel. Feb. 6, 2002) (“Third Report”), at ¶ 103.

⁸ See US Department of Commerce, Economics and Statistics Administration, National Telecommunications and Information Administration, *A Nation Online: How Americans Are Expanding Their Use of the Internet* (Feb. 2002) at 67, Table 7-3.

⁹ See *WorldCom IP Relay Order*, Statement of Commissioner Michael J. Copps.

the ability of persons with disabilities to obtain access to these new services and technologies and to the resulting benefits such access brings.

D. Commission Leadership In Ensuring Access To New Services Is Essential.

In part because of the new services and technologies made available by broadband Internet access, such access now provides greater opportunities to improve the lives of persons with speech and hearing disabilities. As Commissioner Copps noted at the 14th Biennial International Conference of TDI last year:

Call it the IT economy, the Digital Age, the World Wide Web or whatever you will, it is rocketing us into cyberspace at the speed of light. It's valuable cyberspace, because what we find there are the education and information and commerce and jobs of America's future. *Those who get there win; those we don't get there lose.* I want to contribute to making sure we all get there, and that in the vanguard, traveling at the speed of light, is America's disability community.¹⁰

Ensuring that persons with disabilities continue to have access to the Internet and the significant opportunities it provides is essential to ensuring that these individuals are not left out of the digital world.

The Commission has already taken positive steps to ensure that individuals with speech and hearing disabilities have access to new services that can improve their ability to utilize broadband Internet services. For instance, the Commission recently authorized WorldCom, Inc., to recover costs associated with IP Relay service from the federal Telecommunications Relay Service ("TRS") fund.¹¹ In light of this progress, the Commission should not now limit or delay the availability of these services and technologies to persons with disabilities by declining to

¹⁰ Remarks of Michael J. Copps, Commissioner, Federal Communications Commission, at the 14th Biennial International Conference, Telecommunications for the Deaf, Inc., Sioux Falls, South Dakota, July 10, 2001 (emphasis added).

¹¹ *WorldCom IP Relay Order.*

exercise its jurisdiction to ensure that cable modem services providers promote access to advanced services by persons with disabilities.

E. If Section 255 Is Inapplicable To Cable Modem Services, The Commission Must Ensure Nonetheless That Persons With Hearing Or Speech Disabilities Have Access To Advanced Services.

The Commission's classification of cable modem services as an information service may have the effect of jeopardizing such accessibility. Section 255 of the Telecommunications Act requires that "a provider of *telecommunications service* shall ensure that *the service* is accessible and usable by individuals with disabilities, if readily achievable."¹² Notably, the Commission established fair and far-reaching requirements for telecommunications providers under Section 255 to protect the interests of persons with disabilities.¹³ On their face, however, Section 255, and the applicable regulations thereunder, do not apply to providers of information services.¹⁴ Without the statutory mandate of Section 255, or other appropriate regulatory safeguards to ensure that cable modem providers make broadband access services and Internet access readily accessible to and usable by persons with speech or hearing disabilities, these individuals will no longer have the legal right to equal access to these extremely important services.¹⁵

¹² 47 U.S.C. § 255(c).

¹³ See *Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996; Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities*, WT Docket No. 96-198, Report and Order and Further Notice of Inquiry, 16 FCC Rcd 6417 (1999) ("Section 255 Order").

¹⁴ *Id.* at ¶ 78.

¹⁵ It is important to note that "click-through access" is, in many cases, not sufficient accessibility for persons with speech or hearing disabilities because of inherent limitations in this method of access. For instance, the ability to access a website over the Internet may be limited by network architecture, equipment, or policies of the subscriber's underlying ISP. Some broadband services may not be available through interconnection alone, but may require special software, specialized modems or other unique equipment. Thus, "click-through access" alone is not sufficient to ensure that persons with disabilities can access and use many of the unique products and services specifically designed for their particular needs that are currently available or are likely to be developed in the future. Nonetheless, in order to ensure the broadest accessibility and usability of advanced services to persons with disabilities, the Commission should implement rules to prohibit restrictions on "click-through access" in addition to

Further, without appropriate regulatory safeguards in place, there are not adequate incentives for cable modem providers to protect the interests of persons with disabilities. As numerous provisions of the Communications Act recognize, market forces are not necessarily sufficient to meet the needs of those with disabilities, and Congress has instructed the Commission to take such special needs into account in developing its policies concerning advanced services.¹⁶ Indeed, the Commission's own regulations implementing Section 255 implicitly recognize that market forces alone are insufficient to ensure equal access to telecommunications for persons with disabilities. Accordingly, if the Commission classifies cable modem services as information services, the Commission must nonetheless make adequate assurances through its ancillary regulatory authority that such services must be accessible to and usable by persons with disabilities consistent with Congress' intent in enacting Section 255.

F. The Commission Has The Jurisdiction To Mandate Equal Access.

Even if the Commission is not persuaded to reconsider its decision to classify cable modem service as an information service, the Commission should consider, as it did in its wireline broadband Notice of Proposed Rulemaking, whether such service includes a transmission component that would remain subject to the Commission's Title II jurisdiction. This component would therefore remain subject to the requirements of Section 255 and the rules promulgated thereunder, as well as the Commission's *Computer II* safeguards.

Further, even if the Commission classifies cable modem services as information services, the *NPRM* recognizes¹⁷ that the Commission continues to retain Title I ancillary jurisdiction over

the Section 255 safeguards necessary to ensure appropriate access for such individuals to cable modem services and features.

¹⁶ See, e.g., 47 U.S.C. §§ 225, 251(a)(2), 255, and 610.

¹⁷ Section 255 Order, at ¶ 93.

those services.¹⁸ Under its Title I ancillary jurisdiction, the Commission has the ability to, and, in order to prevent discrimination against persons with disabilities, must promulgate regulations that mirror the statutory requirements of Section 255. Specifically, the Commission must establish rules requiring that a provider of cable modem *information service* make that service accessible to and usable by individuals with disabilities, if readily achievable.

The Commission has previously exercised its Title I jurisdiction to ensure provisioning of information services to persons with disabilities.¹⁹ In the *Section 255 Order*, the Commission ruled that access to certain information services (*i.e.*, voice mail and interactive menu service) was so essential to persons with disabilities that the Commission would promulgate requirements “comparable to those under Section 255.”²⁰ For the same reasons asserted then to extend Section 255 accessibility requirements to certain information services, the Commission should extend the Section 255 accessibility requirements to cable modem Internet access in this case, in the event that the Commission reaffirms its reclassification of cable modem Internet access as an information service.²¹ Indeed, such action is necessary to ensure that persons with disabilities are not denied equal access to essential Internet access and advanced services.

¹⁸ See *NPRM*, at ¶¶ 75-79. In the *NPRM*, the Commission noted that Federal courts have recognized the Commission’s authority to promulgate regulations to effectuate the goals and provisions of the Communications Act in the absence of explicit regulatory authority, and specifically acknowledged that it had exercised its Title I authority over information services to “ensure the achievement of the Commission’s statutory responsibilities.” *Id.* at ¶ 75 (citing *United States v. Midwest Video Corp.*, 406 U.S. 649, 706 (1972)). Significantly, one of the circumstances cited by the Commission involved its exercise of Title I jurisdiction over information services to impose disability access requirements on the offering of voicemail and interactive menu services and related equipment. The Commission should do the same in this proceeding in order to ensure continued access by persons with disabilities to cable modem services.

¹⁹ See *NPRM*, at ¶ 76, n.295.

²⁰ *Section 255 Order*, at ¶ 93.

²¹ *Id.*, at ¶¶ 93-108.

Significantly, in its *Broadband NPRM* the Commission specifically requested comments on the application of Section 255 in light of the Commission's proposed finding that broadband Internet access was an information service.²² In doing so, the Commission acknowledged the importance of maintaining the Section 255 protections for persons with disabilities.

This is just as important with respect to cable modem services. Because cable modem service is available to approximately 70%²³ of the population, while wireline broadband services are available only to 45%,²⁴ for most consumers, cable modem service is the primary means of high-speed access. In order to ensure that all segments of society, and in particular individuals with speech and hearing disabilities, are able to enjoy the advantages and benefits of broadband Internet access, the Commission must exercise its ancillary jurisdiction under Title I to require that cable modem providers make such services accessible and usable by individuals with disabilities. The first step is for the Commission to announce its specific intent to use its Title I authority to ensure such access.

Because broadband Internet access through cable modems is in its earlier stages and new services and technologies offering ever increasing capabilities and potential are continually being developed, it is difficult for TDI to state with specificity what sorts of access requirements are needed by people with speech or hearing disabilities. Nevertheless, the potential for vastly improving the lives of the speech or hearing disabled offered by broadband Internet access should not be compromised in any way. Removing cable modem facilities and services from the requirements of Section 255 could relieve a cable modem provider from accommodating the

²² *Broadband NPRM*, at ¶ 59.

²³ *In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Responsible And Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 705 of the Telecommunications Act of 1996*, Third Report, CC Docket No. 98-146, FCC 02-33 (rel. Feb. 6, 2002) ("*Broadband Report*"), at ¶ 46.

types of services or technologies that can most benefit individuals with speech or hearing disabilities. Ultimately, whatever information is transmitted over cable modems in an audio format should be accessible to persons with speech or hearing disabilities in a visual format.

Therefore, rather than removing the statutory protections provided by Section 255 to telecommunications services from application to cable modem services, the Commission should take the steps necessary to ensure those protections remain in place, even if the jurisdictional predicate is Title I rather than Title II. Failing to do so now could severely impair the development of services for people with hearing disabilities in the future. TDI acknowledges that cable modem providers may gain certain freedoms as a result of the Commission's Declaratory Ruling; however, those freedoms should not come at the expense of a limitation on the ability of persons with disabilities to gain access to advanced services.

G. In the NPRM, The Commission Recognized Its Obligation To Ensure Broad Availability Of Advanced Services To All.

As the Commission noted in the *NPRM*, one of its primary policy goals is to encourage the availability of broadband to all Americans.²⁵ In fact, the Commission cited as one potential basis for its authority to continue to regulate cable modem service under Title I the Commission's basic purpose "to make available, so far as possible, to all the people of the United States . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges."²⁶ In order to accomplish this goal, the Commission must ensure that individuals with speech or hearing disabilities, for whom broadband Internet access provides significant benefits and creates unparalleled opportunities,

²⁴ *Broadband Report*, at ¶ 51.

²⁵ *NPRM*, at ¶ 4.

²⁶ *NPRM*, at ¶ 79 (citing 47 U.S.C. § 230(b)).

continue to be able to obtain access to the cable modem and other broadband Internet access services that make those opportunities available.

H. Open Access To Multiple Internet Service Providers Is Essential To Persons With Speech Or Hearing Disabilities.

In addition to the benefits derived from being able to access new services and technologies over the Internet via cable modems, individuals with speech and hearing disabilities, like all consumers, benefit from being able to access multiple Internet service providers (“ISPs”) over cable modem facilities at a reasonable cost.

Persons with disabilities should not be foreclosed from obtaining access to specialized services of particular use to them merely because those services are offered by a third-party ISP unaffiliated with their cable modem provider’s affiliated ISP to which access is either barred by the cable modem provider or offered only at the cost of paying for redundant, more basic ISP features offered by the cable modem service provider. In its *NPRM*, the Commission appears to be reluctant to impose a requirement that cable modem providers provide access to multiple ISPs. Yet, as noted, many of TDI constituents utilize Instant Messaging and other text-based messaging services as a substitute for voice telephony. Such services have often first become available on a proprietary basis from a single ISP. In the absence of a requirement that cable modem providers permit consumers to access multiple ISPs, those individuals who obtain their cable modem service from one entity and their e-mail service from another entity, may not have access to this service or may have to incur additional costs they can ill afford to obtain the service.

The Commission could tailor an accessibility requirement under its Title I authority to meet its policy goals of encouraging the availability of broadband at reasonable cost in a minimal regulatory environment. Indeed, it is difficult to envision a scenario that would “encourage the

ubiquitous availability of broadband to all Americans” more than the ability of cable modem subscribers to access any of the numerous of ISPs currently operating in the market. A policy that would restrict cable modem subscribers to only the ISP operated by their provider, combined with the ability of wireline broadband providers to limit access to only their affiliated ISPs, would severely limit the choices of ISPs available to consumers.²⁷

If third party providers offer services, features, or capabilities of special use to persons with speech or hearing disabilities it is critical that such persons have immediate access to them at reasonable cost. Thus, rather than promoting the competition that will encourage the development of multiple ISPs, and the corresponding greater penetration of broadband access to consumers, and the consequent increased availability of specialized services and products addressing the particular needs of individuals with speech or hearing disabilities, a policy that would allow cable modem providers to restrict access to unaffiliated ISPs would virtually ensure that the only ISPs that can reach consumers, and thus remain viable, will be those that can rely on their affiliated cable modem and/or broadband access providers to bring consumers to them.

Further, a third-party ISP access requirement need not involve a significant amount of regulation and, thus, could meet the Commission’s goal of promoting broadband access “in a minimal regulatory environment.”²⁸ For instance, in the deregulated environment envisioned by the Commission’s information service classification, the Commission could utilize its Title I jurisdiction to retain a requirement that cable modem providers permit subscribers to access multiple ISPs, or Internet-based services or features. Alternatively, as the Commission proposed

²⁷ In addition, while cable modem providers and wireline broadband providers may develop new, innovative services for consumers, including those with speech or hearing disabilities, such innovation would be spurred by the involvement of numerous service providers, including independent ISPs, reflecting multiple business plans, strategies, and technologies.

²⁸ *NPRM*, at ¶ 5.

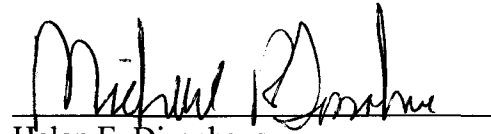
in its *Broadband NPRM*, the Commission could continue to regulate the transmission component of cable modem service to the extent it is separate from the provision of content, and require that such access be made available on a nondiscriminatory basis consistent with Section 255. Either approach would enable the Commission to minimize the regulatory obligations of cable modem providers while at the same time protecting the interests of consumers, and in particular those with disabilities. That consumer choice maximizes consumer welfare is particularly true in the area of access to services by persons with disabilities. In their case, only low cost access may be effectively available to them.

III. CONCLUSION

For the forgoing reasons, if the Commission continues to classify cable modem Internet access as an information service, and thus removes those services from the protections afforded individuals with disabilities by Section 255, the Commission must promulgate regulations under its Title I ancillary authority that mirror those protections and require cable modem providers to make their services accessible and usable to individuals with speech and hearing disabilities, if readily achievable. In addition, the Commission should establish rules to ensure that cable modem subscribers can obtain, at reasonable cost, access to services, features or capabilities offered by third-party providers, such as through the ability to obtain cable modem access service separate from content. Failing to do so will undoubtedly ensure that while some consumers will race ahead into the Digital Age, persons with speech and hearing disabilities will be left in the dust.

Accordingly, TDI respectfully requests the Commission adopt TDI's recommendations in these Comments.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael P. Donahue", is written over a horizontal line.

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